

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

2:12-CR-289 JCM (PAL)

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

TYRONE DAVIS,

Defendant(s).

ORDER

Presently before the court are the report and recommendation of Magistrate Judge Leen. (Doc. # 52). No objections have been filed even though the deadline date for filing objections has expired.

Defendant filed a motion to dismiss count three of the indictment, which charges him with use or possession of a firearm in relation to a drug trafficking offense in violation of 18 U.S.C. §§ 922(g)(1) and 924(c), claiming that the facts and evidence do not establish the elements of that charge. (Doc. # 42). The magistrate judge recommended that the court deny the motion, both because it was not timely filed and because the indictment contains the elements of the charged offense, enables defendant to prepare his defense or plead double jeopardy, and informs the court of the alleged facts so that it can determine the sufficiency of the charge. (Doc. # 52).

This court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party timely objects to

1 a magistrate judge's report and recommendation, then the court is required to "make a de novo
2 determination of those portions of the [report and recommendation] to which objection is made."
3 28 U.S.C. § 636(b)(1).

4 Where a party fails to object, however, the court is not required to conduct "any review at all
5 . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985).
6 Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate
7 judge's report and recommendation where no objections have been filed. *See United States v.*
8 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the
9 district court when reviewing a report and recommendation to which no objections were made); *see*
10 *also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D. Ariz. 2003) (reading the Ninth Circuit's
11 decision in *Reyna-Tapia* as adopting the view that district courts are not required to review "any
12 issue that is not the subject of an objection."). Thus, if there is no objection to a magistrate judge's
13 recommendation, then this court may accept the recommendation without review. *See, e.g.,*
14 *Johnstone*, 263 F. Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation
15 to which no objection was filed).

16 Nevertheless, this court finds it appropriate to engage in a de novo review to determine
17 whether to adopt the recommendation of the magistrate judge. Upon reviewing the recommendation
18 and underlying briefs, this court finds good cause appears to ADOPT the magistrate's findings in
19 full.

20 Accordingly,

21 IT IS HEREBY, ORDERED, AND DECREED that the report and recommendation of
22 Magistrate Judge Leen (doc. # 52) be, and the same hereby is, ADOPTED in its entirety.

23 IT IS FURTHER ORDERED defendant's motion to dismiss count three of the indictment
24 (doc. # 42) is DENIED.

25 DATED February 24, 2014.

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28 **UNITED STATES DISTRICT JUDGE**